

## FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Ms. Alva Stamps worked as a masker for SAI Automotive, Inc., from 1987 through April 15, 1999. That job required her to handle and tape 14 to 16 vehicle bumpers per hour.
2. In April 1999, Ms. Stamps began experiencing symptoms in her low back that she believed were caused by a kidney infection. She consulted her personal physician, Dr. Michael Harwood. But the pain continued. When Ms. Stamps' supervisor, Todd Remmington, determined that she could not perform her job, he instructed her to return to the doctor for treatment until she was able to return to work and perform her job. Dr. Harwood restricted Ms. Stamps from working from approximately April 15, 1999, through July 15, 1999.
3. Ms. Stamps advised her supervisor, on more than one occasion, that the work she was doing was causing severe pain in her back. Ms. Stamps made these statements while she continued to work for SAI and before she was restricted from working.
4. In a physician's statement dated May 5, 1999, Dr. Harwood indicates that Ms. Stamps has a lumbar strain and that her work would aggravate the condition.
5. As of the August 17, 1999 preliminary hearing, Ms. Stamps' back was symptomatic and limiting her activities.

#### **CONCLUSIONS OF LAW**

1. The preliminary hearing Order should be affirmed.
2. The outcome of this claim hinges upon Ms. Stamps' credibility. She testified that her work caused severe pain in her back, which is supported by Dr. Harwood's note that Ms. Stamps' work would aggravate her condition. Ms. Stamps also testified that she notified her supervisor that her job caused her to experience severe pain. The information that Ms. Stamps provided the company was sufficient to place it on notice that, at the very least, her work was aggravating her back and making it worse. The Judge had the opportunity to observe the various witnesses that testified and found Ms. Stamps' testimony persuasive. In this instance, the Appeals Board gives some deference to the Judge's impressions of the witnesses' credibility. Therefore, the Appeals Board also finds that Ms. Stamps injured her back while working for SAI Automotive and that she provided timely notice of the accidental injury to the company.
3. SAI Automotive and its insurance carrier now contend that Ms. Stamps failed to prove that she presently needs medical treatment. They did not raise that issue to the Judge. Instead, they stipulated that Dr. Bohn would be an appropriate physician to treat Ms. Stamps if this claim were found compensable. Because this was not an issue raised

to the Judge, the Appeals Board will not address it for the first time in this appeal. Further, the issue of whether a worker presently needs medical treatment is generally not an issue that can be appealed from a preliminary hearing.<sup>1</sup>

**WHEREFORE**, the Appeals Board affirms the August 25, 1999 preliminary hearing Order entered by Judge Howard.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1999.

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BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS  
Steven J. Quinn, Kansas City, MO  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> See K.S.A. 1998 Supp. 44-534a and 1998 Supp. 44-551.